

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher,

San Diego Gas & Electric Co.,
Complainant,

Docket No. EL00-95-000

v.

Sellers of Energy and Ancillary Services Into Markets
Operated by the California Independent System
Operator and the California Power Exchange,
Respondents.

Investigation of Practices of the California Independent
System Operator and the California Power Exchange

Docket No. EL00-98-000

ORDER GRANTING MOTION AND REQUESTING COMMENTS

(Issued December 10, 2004)

1. In this order, the Commission sets forth an expedited schedule for comments and reply comments regarding certain aspects of the cost-based recovery opportunity the Commission will provide sellers.¹ This order benefits customers by streamlining the cost-based filing process and promoting settlement.

¹ The Commission provided an opportunity for sellers to submit evidence as to whether the refund methodology results in an overall revenue shortfall for their transactions during the period October 2, 2000 through June 20, 2001 (the Refund Period). A seller must demonstrate that the rates were inadequate based on consideration of all costs and revenues, not just certain transactions. *See San Diego Gas & Electric Co.*, 97 FERC ¶ 61,275 at 62,193-94 (2001).

I. Background

2. The Commission held a technical conference on July 26, 2004 to discuss procedures, remaining steps and the timeline for completing the calculation of refunds in the California Refund proceeding.² In response to the Commission's notice inviting comments after the conference,³ several parties submitted comments that included a general discussion on cost-based recovery.

3. On October 21, 2004, IDACORP Energy, LP, Idaho Power Company (together, Idaho) and the California Parties filed a joint motion (Joint Motion) for issuance of an expedited procedural schedule to clarify the scope of transactions eligible for inclusion in the cost filing.⁴ Specifically, movants state that they have reached an impasse in settlement negotiations because of a disagreement concerning the appropriate universe of costs and revenues that a seller must take into account in making a cost filing. California Parties maintain that cost filings must encompass all costs and all revenues related to a seller's entire Western Electric Coordinating Council (WECC) portfolio for the entire refund period. Idaho maintains that such costs and revenues are limited to assessing transactions into the ISO and PX markets.⁵ California Parties add that they have encountered this same issue in settlement negotiations with other sellers.⁶ California Parties and Idaho, therefore, request that the Commission provide further guidance, after affording interested parties the opportunity, on an expedited basis, to comment on the issue and reply to the comments of others.⁷

4. On October 22, 2004, the Commission issued a Notice Shortening Answer Period for answers to the Joint Motion, requiring answers by October 28, 2004. The Competitive Suppliers Group (CSG)⁸ filed a timely response in which it argues that the Commission decided over two years ago that the universe of sales each seller must take into account

² See Notice of Meeting with the California Independent System Operator and the California Power Exchange, issued on July 16, 2004, 69 Fed. Reg. 43,841 (2004).

³ See Notice of Comment Procedures, issued on July 29, 2004, 69 Fed. Reg. 47,136 (2004).

⁴ Joint Motion at 1-2.

⁵ *Id.* at 2-3.

⁶ *Id.* at n.3.

⁷ *Id.* at 3-4.

⁸ The CSG is comprised of: Avista Energy, Inc.; Constellation Power Source, Inc.; Coral Power Company; NEGT Energy Trading-Power, L.P.; Portland General Electric Company; Public Service Company of New Mexico; Puget Sound Energy, Inc.; and Sempra Energy Trading Corporation.

when making a cost filing is limited to sales into the ISO/PX markets.⁹ CSG contends that California Parties are attempting to reopen the issue, and that granting the motion would only lead to an unnecessary delay in resolving this proceeding.¹⁰ California Parties and Idaho each made filings responding to the CSG's answer.¹¹

II. Commission Determination

5. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2004) prohibits an answer to a comment or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept either California Parties' or Idaho's answer to the CSG's answer to the Joint Motion, and will, therefore, reject them.

6. In the interest of developing this and other cost-based filing-related issues, and enhancing settlement, the Commission will grant the Joint Motion and issue an expedited schedule for specific comments and reply comments, as detailed below. In granting this Joint Motion, we note that retroactively establishing a cost-based recovery scheme for transactions that occurred under market-based rates presents a novel challenge. Although several parties have already provided general comments on cost-based recovery in response to the July 26 Technical Conference, we believe further guided discussion would assist the Commission in its decision-making process. We will, therefore, invite comments from parties on the issue that was raised in the Joint Motion, and expand comments as set forth below. Comments filed with the Commission in response to this order should follow the same format as this order, *i.e.*, under the pertinent header and numbered issue set forth in this order.

7. We are interested in a standardized format applicable to all sellers that would present a pragmatic approach to sellers demonstrating that the refund methodology resulted in an overall revenue shortfall. In addition to providing comments on whether sellers' cost filings based on revenue shortfalls from the refund methodology are for sales into only the ISO and PX markets or are WECC-wide, we invite parties to comment on the substance, format and support of the cost-based filings. In particular, we seek comment on the following:

⁹ CSG Answer Opposing the Joint Motion at 3.

¹⁰ *Id.* at 4.

¹¹ Reply of the California Parties to Competitive Supplier Group Answer in Opposition to the Joint Motion of IDACORP Energy, LP, Idaho Power Company and the California Parties for Issuance of Expedited Procedural Schedule to Clarify Cost Filing Issue; Supplemental Statement of IDACORP Energy, LP and Idaho Power Company Respecting Joint Motion.

A. Scope of Transactions

Should sellers' demonstration of costs be limited to sales into only the ISO and PX markets or WECC-wide? Provide justification for your position, not limited to what the Commission has said in prior orders.

B. Determination

- (1) Whether the cost-based recovery for all sellers should be based on seller's average system cost.¹² For marketers, the average system rate should reflect the marketer's entire portfolio of power purchase contracts. Provide comment on how the average portfolio-wide cost should be computed.
- (2) Alternatively, whether the cost-based recovery for all sellers should instead be based on incremental sales. With respect to this option, we seek comment on whether it is feasible for sellers to identify (or "tag") a particular sale to a particular generating unit or power purchase contract. Comment on whether a methodology whereby the most recent power purchase is aligned with the incremental sale most proximate in time would be appropriate.
- (3) Whether the same cost-based recovery method should apply to all sellers, *i.e.*, marketers and non-marketers. In particular, parties are encouraged to comment on the practicality of using the incremental approach outlined in (2) above.
- (4) The suitability of (1) and (2) above, given the refund methodology.
- (5) For those generators who claim offsets to their refund liability (*i.e.*, a fuel cost allowance or emissions adder) and also file for cost-based recovery, we invite parties to comment on how these offsets should be treated in the cost-based filings.
- (6) Whether the cost of transmission service and losses should be included.

C. Support for the Determination of Costs

In both (1) and (2) above, should the cost support be in accordance with 18 C.F.R. § 35.13 (2004)? Given that many sellers do not follow the Uniform System of Accounts, does the attestation under section 35.13 provide adequate verification? If not, comment on another form of verification. What, if any, cost support could be justified in lieu of the requirements of section 35.13?

¹² Average system cost is the revenue requirement divided by the unit sales. Average system cost typically includes the costs of existing power plants, operation and maintenance, tax and fuel expenses.

D. Timing of Cost Recovery Filing

What, if any, problems would arise if the Commission were to order refunds first by those sellers not seeking cost-based recovery, instead of waiting to issue refunds until all sellers' cost-based recovery filings have been filed and processed by the Commission?

E. Template Format

In addition to providing comments on the above, parties are encouraged to file any workable templates. Such templates should not include data, but simply provide format only. We also encourage parties to promptly notify the Commission of their intent to pursue a cost-based recovery filing.

The Commission orders:

(A) The Joint Motion is hereby granted, as discussed in the body of this order.

(B) Interested participants should submit comments no later than ten business days from the issuance of this order. Comments must be submitted consistent with the outline of this order. Comments must be by heading and by number as provided for in this order.

(C) Reply comments should be filed no later than seven business days after the deadline for submission of comments. Comments must be submitted consistent with the outline of this order. Comments must be by heading and by number as provided in this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.